IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.590 of 2000

Date of decision : October 10, 2007

State of H.P. **...Appellant.**

Versus

Attar Singh and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. D.S. Nainta, Deputy Advocate General.**

For the Respondents : **Mr. Anuj Nag, Advocate.**

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for an offence punishable under Section 325 read with Section 34 IPC for allegedly causing grievous hurt to PW-1 Dharam Singh.

3. Prosecution version, as per record, is like this. On 1st December, 1992, around 5 p.m., when PW-1 Dharam Singh returned to his house in village Kandraur, he was told by his family members that respondent Attar Singh had demolished the old boundary marks and extended the fence towards his (Dharam Singh's) property, to the extent of 3-4 feet width. Upon that, PW-1 Dharam Singh went to verify the information. He noticed that the respondents had extended the boundary of their property towards his adjoining property. Respondent Attar Singh was there. When Dharam Singh asked why he had extended the boundary of his property towards his (Dharam Singh's)

Whether reporters of the local papers may be allowed to see the judgment?

property, the latter started hurling abuses. Other respondents, who are the sons of Attar Singh, also reached there. Then Attar Singh allegedly threw Dharam Singh on the ground and the other three respondents fisticuffed and kicked him, which resulted in an injury to his nose and breaking of two teeth.

4. Matter was reported to the police around 8.30. PW-1 Dharam Singh was got medically examined. The doctor noticed swelling of nose. Dharam Singh complained of pain in the teeth but the doctor did not notice any apparent injury on the lips and referred him to the Dental Surgeon. Next day, the Dental Surgeon examined Dharam Singh and found that one of the teeth was missing from the lower socket and two other teeth were mobile. Because of the loss of one tooth and mobility of two teeth, the injury was opined to be grievous in nature.

5. Police investigated the case. One Niranjan Singh, even though cited as a witness by the prosecution, was not examined on the plea that he had been won over by the respondents and Bal Krishan, a son of PW-1 Dharam Singh, who allegedly rescued PW-1 Dharam Singh from the clutches of the respondents, had been examined as PW-2.

6. Prosecution examined Dharam Singh and his son Bal Krishan and also the two doctors, who conducted the medico legal examination. Trial Court acquitted the respondents holding that the sole independent eye-witness in the matter had been withheld and so the prosecution was liable to adverse inference. State has appealed against the acquittal.

7. I have heard the learned Deputy Advocate General and the learned counsel for the respondents and gone through the record.

8. Even though PW-1 Dharam Singh says that he had been assaulted by the respondents and dealt fist and kick blows and PW-2 Bal Krishan, who is his son, has stated that on hearing the cries of his father, he rushed to the spot and rescued him with the help of one Niranjan Singh, yet from an overall reading of the testimony of PW-1 Dharam Singh and PW-2 Bal Krishan, it appears that they have not come out with complete truth. PW-1 Dharam Singh is contradicted by the earliest version, which he gave to the police in the form of report, copy Ex. PW-1/A, in some material particulars. He was duly confronted with the contradictions, which are in the form of omissions. In the Court, Dharam Singh stated that Attar Singh respondent caught him by his arm while respondent Ram Pal pressed his chest with his knee and other two respondents gave him fist blows. In the earliest version, however, he stated that Attar Singh threw him on the ground and other three respondents dealt fist blows on his face and nose. Again, in the earliest version he got recorded that two of his teeth were broken, as a result of the beating given to him by the respondents but while in the Court he stated that one tooth came out of the socket on the spot and one became loose which was pulled out by the doctor, because it was causing him unbearable pain and there was no chance of its being fixed back into the socket. This part of his statement is contrary to the version of the two doctors, namely PW-4 Dr. A.K. Mahajan, who conducted the medico legal examination of PW-1 Dharam Singh on the very day of the occurrence at 10.30 p.m., and PW-7 Dr. B.K. Gautam, who conducted his medico legal examination on the next following day at 4.10 p.m. PW-4 Dr. A.K. Mahajan very categorically stated that he noticed mild swelling of the whole of nose. He also stated that the patient complained of pain to the teeth but he did not notice any injury

other than the one on the nose. He specifically stated that he did not find any injury on the lips. PW-7 Dr. B.K. Gautam even though stated that he found one canine missing from the mouth of the injured due to some recent violence and two teeth were mobile but he did not state that any tooth was found suspended and he removed the same, as testified by PW-1 Dharam Singh. As a matter of fact, the medico legal report issued by PW-7 Dr. B.K. Gautam shows that there were only eleven teeth in the mouth of the injured, six in the upper jaw and five in the lower jaw, which fact suggests that the possibility of injured having got the missing canine removed himself for the same reason for which so many other teeth were not there, cannot be ruled out.

9. In view of the abovestated position, the finding of acquittal returned by the trial Court cannot be said to be perverse. Hence, the appeal is dismissed.

October 10, 2007(sd) **(Surjit Singh), J**